IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 49 of 1998()

CC.504/1995 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDURG
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APPELLANT:

VARKEY PETER, S/O.VARKY,RESIDING AT PADUPPU, BEDAKAM VILLAGE.

BY ADV. SRI.M.RAMESH CHANDER
SRI.M.VIJAYAKUMAR

RESPONDENT:

C.P.MUHAMMED HUSSAIN,S/O.ABOOBACKER.K., MERCHANT, CHOYOMKOD,P.O.CHAYYOTH,VIA. NILESHWAR.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.49 OF 1998 (A)

Dated this the 24th day of January, 2007

JUDGMENT

Appellant is the complainant in C.C.No.504/1995 on the file of the Judicial First Class Magistrate II, Hosdurg. He filed a complaint under Section 138 of the Negotiable Instruments Act alleging that cheque issued by the respondent for Rs.65,000/- was dishonored for 'insufficiency of funds'. After complying statutory formalities complaint was filed. Case of the defence was that accused borrowed Rs.5,000/- from the petitioner and as a security for the above, a blank cheque was given. Amount was paid partly. Rs.3,125/- was already repaid and balance is only very meager and complainant has misused the cheque given. The evidence of PW1 complainant itself shows that complainant has lend money for large number of people even though he has no money lending licence. The case of the complainant was that the accused and one Mr.Balakrishnan borrowed Rs.65,000/- from him and after two weeks he demanded back the money. Accused issued a cheque in his

favour and accordingly cheque was issued and court was of the opinion that a usual money lender will not give money without insisting on any security or promissory note apart from a blank cheque. Therefore case of the complainant is doubtful. Even according to complainant cheque was issued after two weeks of the borrowal. Even before filing the complaint the accused filed a police complaint and it has also come out in evidence that list of creditors were furnished and balance amount due is only Rs.3,125/- in that list. Complainant also stated that the above account shown as Rs.6,250/- was given to the accused to be repaid in 50 instalments. Balance to be paid is Rs.3,125/- and 25 instalmants were paid. Even in the reply notice also the case of the accused as that part amount was paid and he has not borrowed Rs.65,000/-. Considering the above, court below came to the conclusion that the cheque for Rs.65,000/- was not issued for a legally enforceable debt and as the case of the accused was more probable and accused was able to rebut the presumption under Section 139 of the Negotiable Instruments Act. I fully agree with the view of the trial court. In this connection I also refer to the decision in **M.S.Narayana**

Menon @ Mani v. State of Kerala (2006 (6) S.C.C. 39).

No grounds are made out to interfere the above order of acquittal. I also note that even though appeal was admitted on 21.1.1998, appellant was not able to serve notice to the accused so far. In any event, there is no merit in this appeal. Hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.49 OF 1998 (A)

JUDGMENT

24th January, 2007